

November 15, 2019

Mr. Kevin Benhoff
Benhoff Builders, Inc.
215 Old Padonia Road
Cockeysville, Maryland 21093

RE: 212 Hampton Park Circle,
Hampton Park, Lot # 4
Forest Conservation Variance
Tracking # 03-19-3095

Dear Mr. Benhoff:

A request for a variance from Baltimore County's Forest Conservation Law was received by this Department of Environmental Protection and Sustainability (EPS) on October 16, 2019. The variance seeks approval to remove isolated Specimen Tree # 57, a 46-inch European Beech (*Fagus sylvatica ssp.*) in poor condition. The subdivision has complied with the requirements of the Forest Conservation Law, which included protecting this non-native specimen tree. Consequently, this tree has been protected during the initial phases of grading and construction of the above-referenced subdivision. However, the stresses due to limited root impacts and insect infestations have brought about decline and made the tree susceptible to attacks from several fungi further exacerbating the decline. The tree is on Lot # 4 and would be in the residential side yard and adjacent to a water quality facility, were they already constructed. No mitigation is proposed since the tree is in poor condition, is a non-native species, and as such was not assigned any retention credit.

The Director of EPS may grant a special variance to the Forest Conservation law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the three criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The applicant is seeking a building a single family dwelling on a building lot that has complied with the Forest Conservation

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Law. Moreover, preservation of this non-native specimen tree in poor condition would pose a safety hazard to the dwelling to be constructed on the lot. Preservation of this hazardous tree would preclude construction and provide a hardship, as it would deprive the petitioner of all beneficial use of the property. Consequently, this criterion has been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions in the neighborhood. The petitioner's plight is due to the failing specimen tree's close proximity to the proposed dwelling and cul-de-sac on this property rather than general conditions in the neighborhood. Therefore, we find that this criterion has been met.

The third criterion (Subsection 33-6-116 (d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The removal of a dying, non-native specimen tree is minor in scope and will not significantly affect the property. Therefore, we find that the work will not alter the essential character of the neighborhood and that this criterion has been met.

The fourth criterion (Subsection 33-6-116 (e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. This project is not impacting forest and is honoring the Forest Conservation Easements. Furthermore, the proposed water quality facility will be constructed as planned in accordance with Stormwater Engineering of this Department for compliance with current water quality management requirements. Therefore, we find that granting the special variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116 (e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance which is the result of actions taken by the petitioner. The petitioner has taken significant efforts to protect and retain this specimen tree and has not taken any actions necessitating this variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Permitting the removal of a non-native specimen tree in poor condition in advance of construction of the proposed single family dwelling in an approved subdivision that has complied with the Forest Conservation Law would be consistent with the spirit and intent this law. Therefore, this criterion has been met.

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Based on our review, this Department finds that all of the required criteria have been met. Therefore, the requested variance is hereby granted in accordance with Section 33-6-116 of the Baltimore County Code with no conditions given that is a non-native tree in poor condition. However, the following note must appear on the building permit site plan and all subsequent plans for this property:

- “A special variance was granted on November 15, 2019 to Baltimore County’s Forest Conservation Law to remove specimen tree # 57 onsite. An additional special variance to Baltimore County’s Forest Conservation Law will be required for future removal of any additional specimen trees on this property.”

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the appropriate representative sign the statement on the following page and return a signed copy of this entire letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Mr. Michael Kulis at (410) 887-3980.

Sincerely yours,

David V. Lykens
Director

DVL/msk

c. Marian Honeczy, Maryland DNR

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I/we agree to the conditions enumerated in this approval letter to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

Property Owner/Contract Purchaser(s) Date

Printed Name(s)